

*Applicant: Phillips et al.*  
*Application Serial No. 09/735,363*  
*Amendment and Response to Non-Final Office Action*  
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## REMARKS

The above-identified patent application is directed to a composition, comprising a 3'-OH, 5'-OH synthetic phosphodiester nucleotide sequence. Prior to this amendment, Claims 1, 5, 10, and 59-68 were pending. By this amendment, applicants amend Claim 1, and cancel Claims 60, 63-64, and 68. The amendments do not introduce any new matter. Upon entry of the amendments, Claims 1, 5, 10, 59, 61-62, and 65-67 will be pending.

### *Telephone Interview*

Applicants thank the Examiner for the courtesy of a telephone interview on June 6, 2005.

### *Allowable Subject Matter*

The Examiner identifies SEQ ID NOs:8, 10, 25, 42, 43, and 45 as free of the prior art. As discussed below, applicants amend Claim 1 to recite SEQ ID NOs:8, 10, 25, 42, 43, and 45.

### *Claim Rejections under 35 U.S.C. §112, Second Paragraph*

The Examiner rejects Claims 1, 5, 10, and 59-68 under 35 U.S.C. §112, second paragraph as indefinite. Claim 1 as pending prior to the present Amendment and Response, recited a 2 to 20 base nucleotide sequence comprising sequences selected from the group recited in the claim. The Examiner states that the invention comprises nucleotides consisting of the recited sequences, and that language "2 to 20 base" sequence is unclear because none of the recited sequences have "either of these lengths."

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Applicants respectfully bring to the to the Examiner's attention that all of the sequences recited in Claim 1 are within the range of 2 to 20 bases. In an effort to facilitate prosecution, and as discussed during the telephone interview on June 6, 2005, applicants amend Claim 1 to delete the language "2 to 20 base." The amendment does not introduce any new matter. Applicants respectfully assert that the amendment overcomes the rejection of Claims 1, 5, 10, 59, 61-62, and 65-67 under 35 U.S.C. §112, second paragraph.

Applicants cancelled Claims 60, 63-64 and 68, thereby rendering their rejection moot. Applicants request that the rejection be withdrawn.

*Claim Rejections under 35 U.S.C. §102*

Rejection of Claims 1 and 60 under 35 U.S.C. §102(e) over U.S. Patent No. 5,861,245 to McClelland

The Examiner rejects Claims 1 and 60 under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 5,861,245 to McClelland. Applicants amend Claim 1 to delete the reference to SEQ ID NO:9 and cancel Claim 60. The amendments do not introduce any new matter. Applicants respectfully assert that the amendments render the rejection moot and request its withdrawal.

Rejection of Claims 1 and 63 under 35 U.S.C. §102(e) over U.S. Patent No. 6,211,431 to Boevink et al.

The Examiner rejects Claims 1 and 63 under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,211,431 to Boevink et al. (hereinafter *Boevink*). Claims 1 and 63 recite SEQ ID NO:26 (TTGTTT) that matches SEQ ID NO:34 in *Boevink*. Applicants respectfully

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bring to the Examiner's attention that SEQ ID NO:34 in *Boevink* is a part of a larger sequence, not a nucleotide sequence as recited in Claims 1 and 63.

In an effort to facilitate prosecution, applicants amend Claim 1 to delete the reference to SEQ ID NO:26 and cancel Claim 63. The amendments do not introduce any new matter. Applicants respectfully assert that the amendments render the rejection moot and request its withdrawal.

Rejection of Claims 1 and 64 under 35 U.S.C. §102(b) over U.S. Patent No. 5,582,981 to Toole et al.

The Examiner rejects Claims 1 and 64 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,582,981 to Toole et al. (hereinafter *Toole*). Claims 1 and 64 recite SEQ ID NO:41 (GGTTGG) that matches SEQ ID NO:9 in *Toole*. Applicants respectfully bring to the Examiner's attention that SEQ ID NO:9 in *Toole* is a consensus sequence within a larger sequence, not a nucleotide sequence as recited in Claims 1 and 64.

In an effort to facilitate prosecution, applicants amend Claim 1 to delete the reference to SEQ ID NO:9 and cancel Claim 64. The amendments do not introduce any new matter. Applicants respectfully assert that the amendments render the rejection moot and request its withdrawal.

Rejection of Claims 1 and 68 under 35 U.S.C. §102(e) over U.S. Patent No. 6,255,473 to Vitek et al.

The Examiner rejects Claims 1 and 68 under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,255,473 to Vitek et al. (hereinafter *Vitek*). Claims 1 and 68 recite SEQ ID NO:46 (GGGCGG) that matches SEQ ID NO:15 in *Vitek*. Applicants respectfully

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bring to the Examiner's attention that SEQ ID NO:15 in *Vitek* is a putative binding site within a larger sequence, not a nucleotide sequence as recited in Claims 1 and 68.

In an effort to facilitate prosecution, applicants amend Claim 1 to delete the reference to SEQ ID NO:15 and cancel Claim 68. The amendments do not introduce any new matter. Applicants respectfully assert that the amendments render the rejection moot and request its withdrawal.

In view of the foregoing, applicants respectfully request withdrawal of the rejections of Claims 1, 5, 10 and 59-68, and request that Claims 1, 5, 10, 59, 61-62, and 65-67 be allowed.

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### CONCLUSION

The foregoing is submitted as a full and complete response to the Office Action mailed March 9, 2005.

Applicants assert that the claims are in condition for allowance and respectfully request that the application be passed to issuance. If the Examiner believes that any informalities remain in the case that may be corrected by Examiner's amendment, or that there are any other issues which can be resolved by a telephone interview, a telephone call to the undersigned agent at (404) 815-6102 or to Dr. John McDonald at (404) 745-2470 is respectfully solicited.

No additional fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required or credit any overpayment to Deposit Account Number 11-0855.

Respectfully submitted,



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